

REMARKS

This response is submitted in reply to the Office Action mailed on June 23, 2005. Claims 1-20 are pending in this application. Claims 1 and 17 have been amended for clarification purposes and not for any reasons of patentability. Claims 7-14 and 20 have been cancelled without prejudice or disclaimer. New claims 21-29 have been added. A petition for a three-month extension of time is submitted herein. No new matter has been added by this response.

The Examiner objected to claim 17 because it includes an improper Markush grouping. The Applicant has amended claim 17 as suggested by the Examiner to add the term –or--.

In the Office Action, the Examiner stated that claims 1-6, 15, 17-19 were rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5806266 to Jennings et al.. The Examiner states that Jennings et al. discloses the use of a structure (44) for forming a vertically oriented wall including a flexible front panel (10d-g) and a flexible rear panel (10a-c) connected by a plurality of cross members (52) thereby forming a cavity (CA) for accepting filler material therein (column 1 lines 65-67) such that the rear panel at least includes a deformable portion (34) which allows for the rear panel to deform and adjust to form an arcuate configuration.

The invention as defined in claim 1 explicitly recites:

A structure for forming a vertically orientated wall comprising:

a flexible front panel having a longitudinal axis, a transverse axis and substantially continuous front surface;

a flexible rear panel positioned rearwardly and parallel to the front panel; and

a plurality of cross members connecting said front panel and said rear panel,

said front and rear panels defining an upwardly opening cavity therebetween for accepting filler material therein, said rear panel including at least one longitudinally disposed laterally deformable portion which allows for the associated deforming of the rear panel during adjusting of the arcuate configuration of the structure. (Emphasis Added).

Contrary to the claimed invention, the Jennings et al. does not disclose all of the elements of claim 1. In particular, Jennings et al. does not disclose at least: “said rear panel including at least one longitudinally disposed laterally deformable portion”. An example of this element is illustrated in Figures 5 to 8 as channels 28 defined by channel edge sections 21. As claimed, the laterally deformable portions are longitudinally disposed (In the example embodiments shown, the laterally disposed portions extend along the length of the wall from top to bottom). The Jennings et al. does not disclose or contemplate this element. The Examiner states that Jennings et al. discloses “a rear panel including at least a deformable portion (34) which allows the rear panel to deform and adjust to form an arcuate configuration.” Column 2, lines 49-57 of Jennings et al. states:

The base section 22 of each flange 20 is wider at the end portion that is attached to the flexible face 12 and tapers toward the bending line of the terminal end section 24. The flanges 20 are positioned side-by side in a row so that the end portions of adjacent flanges are in close proximity. Accordingly, the space or gap 34 between adjacent flanges increases from the attachment of the flange 20 at said flexible face 12 to said terminal end section 24, as best illustrated in FIGS. 1 and 2. The beam member 10 is therefore flexible about any line in the original plane of the flexible face 12 and perpendicular to the longitudinal centerline thereof. If the arc of curvature through any such line results in an adjacent pair of flanges moving closer to each other (defined herein as a positive arc of curvature), the gap 34 accommodates the flexing of the flexible face 12 until the adjacent edges of the two flanges come

into contact engagement. Of course, the beam member 10 is also flexible into a negative arc of curvature through any such line whereby an adjacent pair of flanges move away from each other.

As should be clear from the above excerpt, gap 34 between flanges 20 is simply a gap between the flanges and is not longitudinally disposed. Thus, it cannot be said that all the elements of claim 1 are disclosed in Jennings et al. Accordingly, Applicant respectfully submits that the rejection of claim 1 under 35 U.S.C. 102(b) should be withdrawn. Claims 2-6, 15, and 16-19 depend either directly or indirectly from claim 1. Therefore, claims 2-6, 15, and 16-19 are patentable for the same reasons provided above.

Claim 16 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Jennings et al.. Claim 16 depends from amended claim 1. Therefore, claim 16 is allowable for at least the reasons set forth above with respect to amended claim 1 because Jennings et al. does not disclose, teach or suggest the novel elements of claim 16 in combination of with the novel elements of amended claim 1.

Claims 7-14 and 20 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. We have cancelled claims 7-14 and 20 and rewrote these claims as new claims 21-29, respectively. The following paragraphs summarize the elements of new claims 21-29.

New claim 21 includes the elements of independent claim 1, dependent claim 2, dependent claim 3 and objected to claim 7.

New claim 22 includes the elements of independent claim 1 and objected to claim 8.

New claims 23 and 24 depend from new claim 22.

New claim 25 includes the elements of independent claim 1 and objected to claim 11.

New claim 26 includes the elements of independent claim 1 and objected to claim 12.

New claims 27 and 28 depend from new claim 26.

New claim 29 includes the elements of independent claim 1 and objected to claim 20.

Applicant respectfully submits that new claims 21-29 are patentable over the art of record and in condition for allowance.

In light of the above, Applicant respectfully submits that claims 1-20 are patentable over the art of record because the cited art does not disclose, teach or suggest all of the elements of the claimed invention. Accordingly, Applicant respectfully requests that claims 1-20 be deemed allowable at this time and that a timely Notice of Allowance be issued in this case.

A check in the amount of \$1620.00 is submitted with this response to cover the fee for the three-month extension of time. If any other fees are due in connection with this application, the Patent Office is authorized to deduct the fees from Deposit Account No. 19-1351. If such withdrawal is made, please indicate the attorney docket number (35500-400400) on the account statement.

Respectfully submitted,

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